



INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms
Washington, D. C. 20226

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DOCUMENTING THE EXPORTATION OF LIQUORS

Proprietors of Distilled Spirits Plants

PURPOSE. This circular reminds proprietors of distilled spirits plants (DSPs) of their responsibility to ensure that the evidence of exportation submitted to the Bureau of Alcohol, Tobacco and Firearms (ATF) is accurate. The submission of inaccurate evidence of exportation may subject the proprietor to liability for tax on the spirits. Also, proprietors who knowingly submit false documentation of exportation may be subject to civil and criminal penalties under the Internal Revenue Code (IRC), as well as the suspension or revocation of their basic permits under the Federal Alcohol Administration (FAA) Act.

BACKGROUND. Recently, ATF has encountered a number of situations in which DSPs have submitted evidence of exportation which was materially incorrect or, in some cases, fraudulent. In some situations, distilled spirits were withdrawn from bond with paperwork indicating overseas shipment. They were, in fact, smuggled into Canada. In other cases, non-taxpaid spirits were discovered remaining illegally in the United States. This circular reminds proprietors of their obligation to use good commercial judgment when exporting distilled spirits. It also reminds proprietors of their potential tax, civil, and criminal liabilities in situations in which distilled spirits removed without payment of tax are diverted from legitimate export channels prior to exportation.

Section 5001 of the IRC imposes a tax on all distilled spirits produced in or imported into the United States. Section 5214(a)(4) provides that distilled spirits on which the internal revenue tax has not been paid or determined may be withdrawn from the bonded premises of any distilled spirits plant without payment of tax for exportation, after filing such bonds as are required by section 5175 and complying with such other requirements as may be prescribed by regulations.

Pursuant to section 5005, the proprietor of a distilled spirits plant is liable for the tax on the distilled spirits produced or stored on the bonded premises of the DSP. If the spirits are withdrawn by a person other than the proprietor, the proprietor may be relieved of liability for the tax at the time of such withdrawal, providing certain conditions are met. Where a person other than a proprietor wishes to withdraw a specific lot of distilled spirits without payment of tax for exportation, he must first file a bond with ATF, and he must apply for permission to withdraw the spirits by filing ATF Form 5100.11, Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.

If the spirits are withdrawn by the proprietor without payment of tax for exportation, the proprietor is relieved of the tax liability at the time the distilled spirits are exported. A DSP proprietor who wishes to export distilled spirits without payment of tax must file ATF Form 5100.11 as a notice in accordance with the instructions on the form.

DISCUSSION. Proprietors are reminded that the Form 5100.11 must be carefully and accurately completed. The proprietor must declare under the penalties of perjury that the distilled spirits

"are truly intended to be (or have been) withdrawn for the purpose indicated, in the manner prescribed in regulations, and will not be (have not been) shipped for the purpose of evading or delaying payment of any internal revenue tax thereon." Pursuant to the provisions of 18 U.S.C. § 1001, knowing and willful falsification of a material fact on this form may subject the proprietor to criminal penalties.

Proprietors are also reminded to familiarize themselves with the regulations concerning direct exportation of distilled spirits without payment of tax. The regulations specify certain types of evidence to document direct exportation. See 27 C.F.R. §§ 252.40 and 252.250 - 269. An exporter may submit alternative evidence of exportation only after receiving written authorization from ATF.

If ATF determines that the evidence of exportation is materially incorrect or fraudulent, and that the spirits were not exported as reported, ATF will immediately take steps to assess all applicable taxes, interest, and penalties. Other civil and criminal penalties may also be imposed for unlawfully removing or concealing shipments of distilled spirits, defrauding the United States of the tax on spirits, or committing fraudulent noncompliance relating to any required record, return, report, summary, transcript, or other document. Proprietors who violate these provisions with respect to the exportation of spirits without payment of tax may be subject to fines of up to \$10,000 or imprisonment of up to 5 years, or both. These criminal penalties are set forth in 26 U.S.C. §§ 5601, 5602, and 5603.

Proprietors are also reminded that their basic permits under the FAA Act are conditioned upon compliance with all Federal laws relating to distilled spirits, wine, and malt beverages, including tax matters. A proprietor's willful failure to comply with the IRC requirements regarding the exportation of distilled spirits without payment of tax may be grounds for the suspension or revocation of the proprietor's basic permit.

INQUIRIES. Inquiries concerning this circular should refer to its number and be addressed to the Chief, Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, N.W., Washington, D.C. 20226.


Director

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